

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

FOURTH DIVISION



United States of America

Plaintiff,

No. _____

and

State of Minnesota, by its Attorney
General Warren Spannaus, its
Department of Health, and its
Pollution Control Agency,

MOTION TO INTERVENE

Applicant for
Intervention,

vs.

Reilly Tar & Chemical Corp.;
Housing and Redevelopment Authority
of St. Louis Park; Oak Park Village
Associates; Rustic Oaks Condominium,
Inc., and Philips Investment Co.,

Defendants.

TO: Thomas K. Berg, United States Attorney, Francis X. Hermann,
Assistant United States Attorney, 110 S. 4th Street,
Minneapolis, Minnesota, 55401, and Angus Macbeth, Acting
Assistant Attorney General, Attorneys for Plaintiff United
States of America; and

Edward J. Schwartzbauer, William J. Keppel, and Dorsey,
Windhorst, Hannaford, Whitney & Halladay, 2300 First National
Bank Building, Minneapolis, Minnesota 55402, and Thomas E.
Reiersgord and Yngve & Reiersgord, 6250 Wayzata Blvd.,
Minneapolis, Minnesota 55416, attorneys for Defendant Reilly
Tar & Chemical Corporation; and Wayne G. Popham, Allen
Hinderaker, and Popham, Haik, Schnobrich, Kaufman & Doty,
Ltd., 4344 IDS Center, Minneapolis, Minnesota 55402, attor-
neys for Defendant Housing and Redevelopment Authority of St.
Louis Park, Minnesota; and defendant Oak Park Village
Associates and its attorneys; and defendant Rustic Oaks
Condominium, Inc. and its attorneys; and defendant Philip's
Investment Co. and its attorneys:

PLEASE TAKE NOTICE that at a time and place to be sub-
sequently assigned the State of Minnesota will move for leave to
intervene as a party plaintiff in this action in order to assert
the claims set forth in its proposed complaint in intervention, a
copy of which is attached hereto.

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The grounds for this motion are that the State is entitled to intervene as a matter of right under Rule 24(a)(1), Fed. R. Civ. P., and 42 U.S.C. § 6972(b)(2), and also under Rule 24(a)(2), Fed. R. Civ. P.; alternatively, that the state should be granted permissive intervention under Rule 24(b), Fed. R. Civ. P.; and that, under the doctrine of pendent jurisdiction, the State should be allowed to plead state law claims which arise out of the same operative facts as the claim of the United States.

Dated: September 4, 1980.

Respectfully submitted,

WARREN SPANNAUS
Attorney General
State of Minnesota

WILLIAM P. DONOHUE
Special Assistant
Attorney General

DENNIS M. COYNE
Special Assistant
Attorney General

By: /s/ Stephen Shakman
STEPHEN SHAKMAN
Special Assistant
Attorney General

And /s/ William G. Miller
WILLIAM G. MILLER
Special Assistant
Attorney General

ATTORNEYS FOR THE
STATE OF MINNESOTA
1935 W. County Road B2
Roseville, Minnesota 55113
Tel. (612) 296-7342

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UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

FOURTH DIVISION

UNITED STATES OF AMERICA,

COURT FILE NO. _____

Plaintiff,

and

THE STATE OF MINNESOTA, BY ITS
ATTORNEY GENERAL WARREN SPANNAUS,
ITS DEPARTMENT OF HEALTH, AND ITS
POLLUTION CONTROL AGENCY,

Plaintiff-Intervenor,

vs.

COMPLAINT IN
INTERVENTION OF
THE STATE OF MINNESOTA

REILLY TAR & CHEMICAL CORPORATION:
HOUSING AND REDEVELOPMENT AUTHORITY
OF ST. LOUIS PARK; OAK PARK VILLAGE
ASSOCIATES: RUSTIC OAKS CONDOMINIUM,
INC.; AND PHILIPS INVESTMENT CO.,

Defendants.

INTRODUCTION

1. This action was commenced by the United States of America on September 4, 1980, to repair harm caused, and prevent future harm threatened, to the waters in the City of St. Louis Park by coal tar and coal tar derivatives discharged to the environment by Reilly Tar and Chemical Corporation (hereinafter "Reilly Tar"). Count I of this Complaint alleges violations by Reilly Tar of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973. Count II herein alleges the creation of a public nuisance by Reilly Tar. Count III herein alleges violations by Reilly Tar of Minnesota pollution control statutes and rules. Counts IV and V allege liability on the basis of strict liability and negligence. Judgment is sought requiring Reilly Tar to abate the pollution resulting from its use of coal tar, creosote and other coal tar derivatives and to reimburse the State for expenses of defining, monitoring and controlling this pollution.

JURISDICTION AND VENUE

2. This action arises under the laws of the United States and of the State of Minnesota. This Court has jurisdiction over Count I pursuant to 28 U.S.C. § 1331 and 42 U.S.C. §§ 6972-6973. This Court has pendent jurisdiction over Counts II through V which are based on Minnesota law and arise out of a common nucleus of

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operative facts shared with Count I.

3. Venue is proper in this District under 28 U.S.C. § 1391(b) and 42 U.S.C. § 6973 since all claims arose in this District.

PARTIES

4. The Plaintiff United States of America is exercising the authority granted the Administrator of the United States Environmental Protection Agency (EPA) by the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq.

5. The Plaintiff-Intervenor State of Minnesota is a sovereign State of the United States acting through its Attorney General Warren Spannaus, its Department of Health, and its Pollution Control Agency. The Attorney General is a constitutional officer of the State of Minnesota and is empowered under common law and Minn. Stat. § 8.01 (1978) to commence suits for the protection of public rights. The Department of Health is a statutory agency of the State of Minnesota with broad authority under Minn. Stat., ch. 144 (1978), to protect the public health and public water supplies. The Pollution Control Agency (PCA) is a statutory agency of the State of Minnesota with power under Minn. Stat., ch. 115-116 (1978), to prevent, control and abate pollution of the waters of the State, including ground water.

6. Defendant Reilly Tar is an Indiana corporation. The claims asserted herein against Reilly Tar arise from business activities conducted in Minnesota by Reilly Tar.

7. Defendant Housing and Redevelopment Authority of St. Louis Park is a municipal corporation organized and existing under the laws of Minnesota. Defendant Oak Park Village Associates, a limited partnership existing under the laws of the State of Minnesota, bought part of the Reilly Tar site in January, 1978. Defendant Rustic Oaks Condominium, Inc., incorporated under the laws of the State of Minnesota, bought part of the Reilly Tar site in June, 1978 and May, 1979. Defendant Philip's Investment Co. bought part of the Reilly Tar site in January, 1980. Defendant Housing and Redevelopment Authority of St. Louis Park still owns part of the Reilly Tar site. The Defendants named in this

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paragraph are named as defendants only to insure that the remedial measures sought by the Plaintiff-Intervenor can be fully implemented.

FACTUAL BACKGROUND

8. The State alleges and incorporates by reference paragraphs 5 through 22 of the Complaint of the Plaintiff United States of America which describe the activities of Defendants in St. Louis Park, Minnesota, and the endangerment to health and the environment created by the activities of Reilly Tar.

9. The State of Minnesota through its agencies and its Attorney General has engaged in substantial efforts to abate and correct the harm caused to health and the environment of Minnesota by the activities of Reilly Tar. These efforts include the filing of a lawsuit in October, 1970, against Reilly Tar in the District Court of Minnesota, Fourth Judicial District, and the filing of an amended complaint in September, 1978. Other efforts by the State include administrative actions, extensive chemical analyses, investigations of the extent of the contamination, assessment of health risks, closing of area wells, and monitoring of public drinking water supplies.

10. The investigative and enforcement actions taken by the State establish that coal tar and its derivatives from Reilly Tar's Minnesota operation have created an extremely large area of contamination in the soil and ground water on and about its former plant site. These wastes contain highly toxic compounds, including polyaromatic hydrocarbons (PAH) which are carcinogenic in nature. Chemical analyses show that these wastes are present both in the soil and in the ground water which is utilized as a public drinking water supply. Studies of the extent of contamination establish that the areal extent of contamination is growing and moving to areas more heavily used for drinking water supplies.

11. All of these efforts by the State have been undertaken at considerable expense, in an attempt to define and contain

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the serious and potentially disastrous situation resulting from Reilly Tar's operations. Reilly Tar has consistently refused to take any corrective action to mitigate the harm it has caused to the environment and health of Minnesota.

COUNT I

RESOURCE CONSERVATION AND RECOVERY ACT

12. The State realleges paragraphs 1 through 11 of this Complaint and incorporates herein by reference paragraphs 23 through 29 of the Complaint of the United States of America.

COUNT II

PUBLIC NUISANCE

13. The State realleges the allegations contained in paragraphs 1 through 11 of this Complaint.

14. The aforesaid actions by Reilly Tar have created a common law public nuisance which has damaged the State and its citizens and inhabitants in a substantial amount not yet ascertained but to be determined in this action. Said public nuisance will continue to damage the State and its citizens and inhabitants until such time as the pollution of ground water caused by Reilly Tar's actions is abated.

15. Reilly Tar has violated State Statutes and Rules, as set forth hereinafter in paragraphs 17 through 19. These violations constitute a statutory public nuisance, as provided in Minn. Stat. §115.071, Subd. 4 (1978).

COUNT VI

VIOLATION OF STATE STATUTES AND RULES

16. The State realleges the allegations contained in paragraphs 1 through 11 of this Complaint.

17. Reilly Tar has violated Minn. Stat. §115.061 (1978) (enacted in 1969 as Minn. Laws 1969, ch. 931, §4) which requires Reilly Tar to notify the PCA immediately of its discharges of coal tar, creosote and other coal tar derivatives and to take whatever immediate action was and is reasonably possible to recover the

discharged pollutants and to minimize or abate pollution of the waters of the State.

18. Reilly Tar has violated Minn. Stat. §115.07, subd. 1 (1978) (enacted in 1945 as Minn. Laws 1945, ch. 395, § 1) which requires Reilly Tar to obtain a permit for its activities in the State of Minnesota.

19. Reilly Tar has violated Minn. Reg. WPC 4(b) (1964), 6 MCAR §4.8004(b), which requires Reilly Tar to store oil and other liquid substances with reasonable safeguards to prevent pollution of the waters of the State and to obtain a permit for such storage.

COUNT IV

STRICT LIABILITY FOR ABNORMALLY
DANGEROUS ACTIVITIES

20. The State realleges the allegations contained in paragraphs 1 through 11 of this Complaint.

21. Because of the potential for water pollution by coal tar, creosote and the other coal tar derivatives used in or resulting from Reilly Tar's operations, the activities of Reilly Tar herein complained of constituted an unduly dangerous activity involving a risk of serious harm to the citizens and inhabitants of the State.

22. Reilly Tar knew or should have known that the activities herein complained of were unduly dangerous and involved a risk of serious harm to the citizens and inhabitants of the State. Reilly Tar voluntarily engaged in such unduly dangerous activities for its own pecuniary gain.

23. As a direct and proximate result of the actions of Reilly Tar, for which it is strictly liable, the State and its citizens and inhabitants have suffered substantial damages in an amount not yet ascertained but to be determined in this action.

COUNT V

NEGLIGENCE

24. The State realleges the allegations contained in paragraphs 1 through 11 of this Complaint.

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25. The actions of Reilly Tar complained of herein were in violation of a duty of care owed to the State and its citizens and inhabitants, in that said actions were unreasonable, careless and negligent.

26. As a direct and proximate result of the negligent actions of Reilly Tar, the State and its citizens and inhabitants have suffered substantial damages in an amount not yet ascertained but to be determined in this action.

PRAYERS FOR RELIEF

WHEREFORE, the Plaintiff-Intervenor State of Minnesota prays that this Court issue its judgment and order:

1. Assessing against Reilly Tar and Chemical Corporation civil penalties and damages in an amount determined by this Court pursuant to Minn. Stat. §§ 115.071, subd. 3 (1978), for the violations of Minn. Stat. §§ 115.061, 115.07, subd. 1, (1978), and Minn. Reg. WPC 4(b) (1964), (6 MCAR §4.8004(b)).

2. Ordering Reilly Tar and Chemical Corporation to prevent the further spread in the ground water and aquifers of hazardous wastes from the Reilly Tar site by accomplishing measures, including the following, according to a plan and schedule approved by the Court after consultation with the Environmental Protection Agency and the State of Minnesota:

a. install and operate a system of gradient control or barrier wells which includes treatment with appropriate chemical technology of the ground waters extracted from the wells;

b. locate, inspect, clean, properly abandon, and monitor existing wells which may facilitate the spread of hazardous wastes from the Reilly Tar site;

c. clean out the material plugging the 909-foot deep well on the Reilly Tar site and properly dispose of the material;

d. develop a well-field management plan for, and monitor and verify with progress reports filed with the

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Court, the Environmental Protection Agency and the State of Minnesota, the accomplishment of all measures identified in the court-approved plan.

3. Ordering Reilly Tar and Chemical Corporation to repair and clean up the pollution caused by its handling, storage, treatment, and disposal of hazardous wastes at the Reilly Tar site by accomplishing measures, including the following, according to a plan and schedule approved by the Court after consultation with the Environmental Protection Agency and the State of Minnesota:

a. determine the nature and extent of contamination by hazardous wastes of the soil on, in, beneath and immediately surrounding the Reilly Tar site;

b. remove, neutralize, or isolate all hazardous wastes and contaminated soil, on, in, beneath, and immediately surrounding the Reilly Tar site in order to eliminate further leaching and migration of hazardous wastes into the ground water and aquifers;

c. remove hazardous wastes from the Reilly Tar site from the ground water and aquifers;

d. insure the proper collection, disposal, and/or treatment of any hazardous wastes, contaminated soil, or contaminated ground water removed from the environment as a result of the implementation of the measures required by subparagraphs b and c; and

e. monitor and verify with progress reports filed with the Court, the Environmental Protection Agency, and the State of Minnesota, the accomplishment of the measures required in subparagraphs a through d.

4. Ordering Reilly Tar and Chemical Corporation to finance all monitoring and maintenance necessary to verify the containment and clean-up of hazardous wastes from the Reilly Tar site.

5. Ordering Reilly Tar and Chemical Corporation to finance the restoration of closed drinking water wells in the City of St. Louis Park which have been contaminated with hazardous wastes from the Reilly Tar site and/or to finance the acquisition and development of alternate sources of water.

6. Ordering Reilly Tar and Chemical Corporation to pay the State of Minnesota its expenses for the studies and projects listed below; to pay the State of Minnesota additional expenses incurred by the State in taking samples, installing monitoring wells and otherwise identifying, quantifying, and locating hazardous wastes on and migrating from the Reilly Tar site; and to pay the litigation expenses incurred by the State to the extent the violations alleged herein are shown to be willful. Among the studies and projects which have been undertaken by the State of Minnesota at its expense are the following:

- a. Barr Engineering Report - a study of the contamination of soil and ground water and future impacts on water quality, completed at a cost of \$108,000.
- b. United States Geological Survey Cooperative Project - a study to define ground water flow and the transport of contaminants, to be completed at a cost of \$200,000.
- c. Well Abandonment Program - a program to locate, clean out, and seal or recomplete 24 multi-aquifer wells which were facilitating, or appeared likely to facilitate, the spread of contaminants to deeper aquifers, to be completed at a cost of \$70,000.
- d. Hickok Consortium Study - a contract to research measures and unit cost estimates for abating the soil and ground water contamination emanating from the Reilly Tar site, projected to cost \$120,000.

7. Ordering the Reilly Tar and Chemical Corporation to post a performance bond for the accomplishment of all remedial measures, the amount of which will be determined in later proceedings.

8. Awarding the State of Minnesota the costs of this suit, including attorneys' fees, and such other relief as this Court

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deems just and appropriate.

Respectfully submitted this 4th
day of September, 1980.

WARREN SPANNAUS
Attorney General
State of Minnesota

WILLIAM P. DONOHUE
Special Assistant
Attorney General

DENNIS M. COYNE
Special Assistant
Attorney General

By /s/ Stephen Shakman
STEPHEN SHAKMAN
Special Assistant
Attorney General

And /s/ William G. Miller
WILLIAM G. MILLER
Special Assistant
Attorney General

1935 West County Road B2
Roseville, Minnesota 55113
Telephone: (612) 296-7342

Attorneys for
Plaintiff-Intervenor
State of Minnesota

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